FILED
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 126

WALLACE DELANEY MOHAMMED,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari to the United States Court Of Appeals For The Seventh Circuit

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

Your petitioner, Wallace Delaney Mohammed, respectfully petitions this Honorable Court to grant a rehearing of this cause, and to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

In support of this petition, your petitioner respectfully submits that this Honorable Court has overlooked or misapprehended the following point:

The void order to report issued by the local board on February 11, 1957 so prejudiced petitioner in his attempt to get a proper administrative ruling on his claim to exemption as a minister of religion, that it cannot be said that petitioner has been afforded the due process of the law.

Petitioner's selective service file was out of the control of the local board office from October 17, 1957, until September 23, 1958 (A.* 35) due to the fact that he was being prosecuted under indictment 57 CR 532 based on an order to report, which was twice later determined to be invalid by the trial court (A. 9, 56).

When petitioner's request for a reclassification of April 1, 1958 (Government Ex. B-63) was received by the local board, defendant's file was in the state headquarters (A 36). That letter was not read by the local board for six and one-half months after the date it was received (A. 34), i.e., sometime in October, 1958. It was obviously not given any consideration for such a long time for two reasons: (1) the board members and their staff were of the opinion that as long as 57 CR 532 was pending, they had no jurisdiction to change petitioner's classification; and (2) with the selective service file physically out of their hands, the local board could not take any action had they wanted to.

Thus, the local board, in part at least, based its refusal to reconsider petitioner's claim on an erroneous conclusion of law. Furthermore, when the fallacy of their position was discovered, the local board immediately issued another order to report without complying with the regulations that require notice to the registrant of a denial of a re-

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* Reference to defendant's printed appendix used below referred to as A followed by page number.

quest for reclassification. Selective Service Regulation 1625.4, 32 C.F.R. § 1625.4.

Furthermore, the failure of the local board to notify petitioner of its "reconsideration" on October 21, 1958, as prescribed by regulation, so prejudiced petitioner in his attempt to perfect his claim before the local board that the unfairness in such a situation was tantamount to a denial of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Helen E. Everling, Chief Clerk of Selective Service Area Office No. 11, Chicago, testified at the trial for the Government. On direct and cross examination she testified that Local Board No. 48 "reconsidered" the classification of the defendant on October 21, 1958 (A. 34). The Government in its brief in opposition to defendant's petition for certiorari takes this to be the fact (Govt.'s Br. p. 9).

It is undisputed in the record that Local Board No. 48 did not notify petitioner of this "reconsideration" of his classification (A. 35).

The failure of Local Board 48 to notify defendant of its "reconsideration" as prescribed by the Selective Service Regulations was a denial of due process of law. Selective Service Regulations 1625.4, 1625.11, 1625.12, 1625.13, 1625.14, 32 C.F.R. §§ 1625.4, 1625.11, 1625.12, 1625.13 and 1625.14; *Stain* v. *United States*, 235 F 2d 399, 343 (C.A. 9, 1956); *Olivera* v. *United States*, 223 F 2d 880, 883 (C.A. 5, 1955); *United States* v. *Vincelli*, 215 F 2d 210, 213 (C.A. 2, 1954); *Atkins* v. *United States*, 204 F 2d 269, 271 (C.A. 10, 1953); *United States* v. *Fry*, 203 F 2d 638 (C.A. 2, 1953); *Knox* v. *United States*, 200 F 2d 398, 401 (C.A. 9, 1952); *United States* v. *Stiles*, 169 F 2d 455 (C.A. 3, 1948).

From the foregoing cases, it appears that it has been clearly decided in the Second, Third, Fifth, Ninth and Tenth Circuits that if there is a "reconsideration" of a registrant's classification and a failure by the local board to so notify the registrant of this reconsideration pursuant to regulation, then, if this results in prejudice to the registrant, it is a denial of due process that ousts the local board of its jurisdiction, and any subsequent order to report is void.

In the case at bar, the resulting prejudice to petitioner from this failure of the local board to so notify petitioner is quite evident. With prompt notice petitioner could have protested the ruling and at least would have had a chance to present the proof that the trial court and the Court of Appeals now so pointedly claim to be lacking. The utter silence of local board lulled petitioner into the false notion that the local board was considering his claim when all of the time it had not considered it due to the pendency of 57 CR 532 as outlined above, and upon notification of the fact that the first order was void and therefore did not oust them of jurisdiction they immediately rejected the claim and diligently prepared a new order to report under the advice and insistence of the United States Attorney's office (A. 56). For, upon receipt of that order to report by petitioner, the regulations permit a reopening only if "there has been a change in the registrant's status resulting from circumstances over which the registrant had no control." Selective Service Regulation 1625.2. 32 C.F.R., § 1625.2. Thus petitioner's opportunity to force a reopening was neatly foreclosed.

In short, the original order to report, which was later determined to be void set off a chain of circumstances

that made it utterly impossible for petitioner to get a fair administrative determination of his claim, a determination that is the basis of his conviction.

This question was squarely raised below and adversely ruled upon by the trial Court (A. 10), again raised in the Court of Appeals and again adversely ruled upon.

We submit that there should be an authoritative pronouncement made by this Honorable Court on the subject and that the Seventh Circuit should either be upheld in its view or brought into line with the other circuits.

Wherefore, your petitioner respectfully prays that this Honorable Court will reconsider its ruling upon the issues here raised and presented, and enter an order granting the issuance of the writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

WILLIAM R. MING, JR.,
GEORGE N. LEIGHTON,
ELLIS E. REID,
Counsel for Petitioner.

William R. Ming, Jr., one of the attorneys for petitioner, hereby certifies that the foregoing petition for rehearing is presented in good faith and not for the purpose of delay and said petition is restricted to substantial grounds available to petitioner, although not previously presented.

/s/ William R. Ming, Jr.
Counsel for Petitioner.